In re: GREENVILLE PACKING COMPANY, INC.
FMIA Docket No. 98-0005.
PPIA Docket No. 98-0003.
Decision and Order filed June 1, 2000.

Meat inspection – Poultry inspection – Felony conviction – Bribery – Withdrawal of inspection services – Mitigating circumstances – Collateral effects – Presumption of regularity – Sanction policy – Sanction testimony.

The Judicial Officer affirmed the Decision by Judge Baker (ALJ) indefinitely withdrawing inspection services under title I of the Federal Meat Inspection Act (FMIA) and under the Poultry Products Inspection Act (PPIA) from Respondent, based upon Respondent's conviction of the felony of bribery of a public official in violation of 18 U.S.C. § 201(c)(1)(A). The Judicial Officer found that Respondent's bribery of a Food Safety and Inspection Service (FSIS) inspector to avoid required ante mortem and post mortem inspections at Respondent's establishment strikes at the heart of the FMIA and the PPIA. The Judicial Officer considered the mitigating circumstances offered by Respondent, but found that they were insufficient to overcome Respondent's unfitness to receive inspection services under the FMIA and under the PPIA, as demonstrated by Respondent's felony conviction. The Judicial Officer held that once Respondent introduced factors in mitigation of its bribery conviction, Complainant could introduce evidence of aggravating circumstances. The Judicial Officer rejected Respondent's contention that FSIS inspectors issued process deficiency records (PDRs) in order to build a record of aggravating circumstances. The Judicial Officer stated that there is a presumption of regularity with respect to official acts of public officers and in the absence of clear evidence that FSIS inspectors improperly issued PDRs, the FSIS inspectors are presumed to have properly discharged their official duties. The Judicial Officer rejected Respondent's contention that FSIS' Federal Register notice (44 Fed. Reg. 37,322-24 (1979)) setting forth the sanction FSIS will seek in administrative proceedings is a "per se" policy that has been rejected by the federal courts. The Judicial Officer held that, under the Department's sanction policy, sanction recommendations of administrative officials, while not controlling, are relevant and that the ALJ properly allowed an administrative official charged with the responsibility for achieving the congressional purposes of the FMIA and the PPIA to testify regarding his sanction recommendation.

Howard D. Levine and Rick D. Herndon, for Complainant.
John Breeze and Michael Rhodes-Devey, Slingerlands, NY, for Respondent.
Initial decision issued by Dorothea A. Baker, Administrative Law Judge.
Decision and Order issued by William G. Jenson, Judicial Officer.

The Administrator, Food Safety and Inspection Service, United States Department of Agriculture [hereinafter Complainant], instituted this proceeding under the Federal Meat Inspection Act, as amended (21 U.S.C. §§ 601-695) [hereinafter the FMIA], the Poultry Products Inspection Act, as amended (21 U.S.C. §§ 451-471) [hereinafter the PPIA], and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice] by filing a Complaint on July 27, 1998.

The Complaint alleges Greenville Packing Co., Inc. [hereinafter Respondent], was convicted in the United States District Court for the Northern District of New York of the felony of bribery of a public official in violation of 18 U.S.C. § 201(c)(1)(A), and by reason of Respondent's felony bribery conviction, Respondent

is unfit to engage in any business requiring inspection services under title I of the FMIA and under the PPIA (Compl. ¶¶ II, III). Complainant seeks an order indefinitely withdrawing inspection services under title I of the FMIA and under the PPIA from Respondent (Compl. at 4).

Respondent filed an Answer on September 4, 1998, which admits the jurisdictional allegations in the Complaint, including the conviction of the felony of bribery of a public official in violation of 18 U.S.C. § 201(c)(1)(A), but denies Respondent is unfit to engage in any business requiring inspection service under title I of the FMIA or under the PPIA (Answer ¶¶ 1-3).

Administrative Law Judge Dorothea A. Baker [hereinafter the ALJ] conducted a hearing on September 29, 1999, in Albany, New York. Howard D. Levine and Rick D. Herndon, Office of the General Counsel, United States Department of Agriculture, represented Complainant. Michael Rhodes-Devey and John Breeze, Breeze & Rhodes-Devey, Slingerlands, New York, represented Respondent.

On November 24, 1999, Complainant filed Complainant's Proposed Findings of Fact, Conclusions of Law, and Proposed Order; on January 10, 2000, Respondent filed Respondent's Proposed Findings of Fact and Conclusions of Law [hereinafter Respondent's Brief]; and on February 4, 2000, Complainant filed Complainant's Reply Brief.

On March 13, 2000, the ALJ issued a Decision and Order [hereinafter Initial Decision and Order] in which the ALJ: (1) found that on or about December 9, 1997, in the United States District Court for the Northern District of New York, Respondent, after a plea of guilty, was convicted of the felony of bribery of a public official in violation of 18 U.S.C. § 201(c)(1)(A); (2) found that Respondent is unfit to receive inspection services under title I of the FMIA and under the PPIA; and (3) indefinitely withdrew inspection services under title I of the FMIA and under the PPIA from Respondent, its successors, affiliates, and assigns (Initial Decision and Order at 3, 13, 31).

On April 18, 2000, Respondent appealed to, and requested oral argument before, the Judicial Officer; on May 19, 2000, Complainant filed Complainant's Reply to Respondent's Appeal; and on May 19, 2000, the Hearing Clerk transmitted the record of the proceeding to the Judicial Officer for a ruling on Respondent's request for oral argument and decision.

Respondent's request for oral argument before the Judicial Officer, which the Judicial Officer may grant, refuse, or limit (7 C.F.R. § 1.145(d)), is refused because Complainant and Respondent have thoroughly addressed the issues in this proceeding. Thus, oral argument would appear to serve no useful purpose.

Based upon a careful consideration of the record and pursuant to section 1.145(i) of the Rules of Practice (7 C.F.R. § 1.145(i)), I adopt the ALJ's Initial Decision and Order as the final Decision and Order. Additional conclusions by the

Judicial Officer follow the ALJ's conclusions and discussion, as restated.

Complainant's exhibits are designated by "CX" and transcript references are designated by "Tr." Respondent introduced no exhibits.

ADMINISTRATIVE LAW JUDGE'S INITIAL DECISION AND ORDER (AS RESTATED)

Findings of Fact

1. Respondent is now and, at all times material to this proceeding, was a corporation which operates a meat and poultry slaughtering and processing establishment located at Route 32, P.O. Box 244, Greenville, New York 12083 (Ans. ¶ 1; CX 1-CX 2).

2. Respondent is now and, at all times material to this proceeding, was operating its meat and poultry slaughtering and processing establishment pursuant to a grant of inspection issued by the United States Department of Agriculture, Food Safety and Inspection Service [hereinafter FSIS] (CX 1-CX 2, CX 12A at 3; Tr. 31-33).

3. Respondent is now and, at all times material to this proceeding, was a recipient of meat inspection service under title I of the FMIA at its place of business in Greenville, New York (Establishment 9956) (Ans. ¶ 1; CX 1-CX 2).

4. Respondent is now and, at all times material to this proceeding, was a recipient of poultry inspection service under the PPIA at its place of business in Greenville, New York (Establishment P-9956) (Ans. ¶ 1; CX 1-CX 2).

5. At all times relevant to this proceeding, Mr. Robert Mattick was the sole shareholder and president of Respondent (CX 1 at 2).

6. Starting in August 1993, Randall Barber was the FSIS inspector permanently assigned to Respondent (CX 12A at 3).

7. On or about December 9, 1997, in the United States District Court for the Northern District of New York, Respondent, after a plea of guilty, was convicted of the felony of bribery of a public official in violation of 18 U.S.C. § 201(c)(1)(A) (Ans. ¶ 1; CX 4-CX 6, CX 9-CX 10).

8. Specifically, Respondent was convicted of the following count:

> That commencing in or about January, 1995 and continuing until in or about January, 1997, in the State and Northern District of New York, GREENVILLE PACKING CO., INC., the defendant herein, did directly and indirectly corruptly give, offer and promise something of value, that is, cash payments, to RANDALL BARBER, a public official, for and because of an official act performed and to be performed by RANDALL BARBER in RANDALL BARBER'S capacity as a food inspector at the GREENVILLE

CX 4.

9. An inspection brand is a metal brand which contains an establishment's number and the letters "U.S. INSP'D & P'S'D" (Tr. 34; 9 C.F.R. pt. 312). The brand is used to distinguish product which has been inspected and which has passed all of the inspection requirements, from product which has not been inspected and has not been passed. Product which has been inspected and passed is eligible for other processing and sale in interstate commerce. Conversely, product which has not been inspected and has not been passed is not eligible to be branded or further processed or sold in interstate commerce. (Tr. 35.)

10. To ensure that inspection brands are only applied to product processed under a grant of inspection while an inspector is present, FSIS maintains tight controls over inspection brands (Tr. 34-36). First, the owner of an establishment must get authorization from the FSIS inspector-in-charge at his or her establishment to have inspection brands manufactured (Tr. 34; 9 C.F.R. §§ 316.1-.2, 317.3). Second, the inspection brand manufacturer must then deliver the inspection brands to an FSIS inspector at the establishment, not to the establishment itself (Tr. 36). Third, at the establishment, the FSIS personnel maintain custody of the inspection brands. Finally, the inspection brands may only be used under the supervision of an FSIS inspector at the establishment and are locked up when an FSIS inspector is not present. (Tr. 36; 9 C.F.R. § 316.4.)

11. FSIS inspector Randall Barber instructed Respondent's employees in his absence to slaughter animals and mark product as inspected and passed, and he gave the inspection brands to Respondent's employees, all of which was in violation of the law (CX 12A).

12. Animals at a federally-inspected slaughtering establishment are required to have ante mortem and post mortem inspections. Ante mortem and post mortem inspections are performed to determine whether products from these animals are fit for human consumption. This determination must be made because some animal diseases can be transmitted from animals and animal tissues to humans. (Tr. 119-20.) Products from an animal which has not received ante mortem inspection is not suitable for consumption by humans because information has not been obtained regarding the animal's health status (Tr. 126). An uninspected animal might have diseases, chemical residues, or repugnancies which render products from the animal unfit for human consumption (Tr. 119-42).

13. Ante mortem inspection is a visual examination of an animal in motion and at rest. During ante mortem inspection, an animal is observed on its left and right sides while in motion and at rest. The inspector examining the animal looks for any abnormalities. Neurological diseases can be detected only during ante

mortem inspection. If an inspector detects an abnormality during ante mortem inspection, the inspector must affix a tag to the ear of the animal which reads "U.S. Suspect" and withhold the animal from slaughter until it can be examined by an FSIS veterinary medical officer. (Tr. 119, 121-22.)

14. Post mortem inspection is examination of a carcass. Post mortem inspection includes examination of the lymph nodes, the heart, the lungs, and the liver. The purpose of the post mortem examination is to obtain additional gross pathological findings that impact on the decision regarding disposition of a carcass. (Tr. 119, 126.)

15. A downer animal is an animal that cannot rise or walk; it is essentially severely disabled. Because a downer animal is much more likely to be diseased than an ambulatory animal, ante mortem inspection of a downer animal is much more extensive than ante mortem inspection of an ambulatory animal and post mortem inspection of the carcass of a downer animal is much more extensive than post mortem inspection of the carcass of an ambulatory animal. Every downer animal must be tagged and identified as "U.S. Suspect" for inspection by an FSIS veterinary medical officer. (Tr. 117-18, 121-24.)

16. An inspector who is not a veterinarian is not qualified to inspect a downer animal. A veterinary medical officer is needed to perform the ante mortem inspection necessary to detect abnormalities in downer animals and to perform the post mortem inspection necessary to detect abnormalities in the carcass of a downer animal. The ante mortem inspection for a downer animal includes a full nose-to-tail examination of the animal, starting at the nose. (Tr. 123-24.)

17. Dr. Craig White is an epidemiologist employed by FSIS. Formerly, Dr. White was an FSIS supervisory veterinary medical officer. As a supervisory veterinary medical officer, Dr. White's responsibilities included Respondent's establishment. (Tr. 109-10, 113-16.)

Dr. White testified as to the performance of an ante mortem inspection of a downer animal, as follows:

> You start by looking at the nose for evidence of hemorrhage or lesions on the nose like blisters or bruises . . . . [I]f you see some of that, you are going to want to look in the oral cavity and determine the extent of it.
>
> You look at the rest of the head for signs of injury or swelling or lymph nodes that may be inflamed. You look at the neck. You examine the neck for distension of the carotid artery which may be an indication of disease. You look at the eyes for any of the abnormalities there. And you just work your way back, examine the entire animal until you get to the rear end. And, of course, then you take his temperature.

Tr. 124.

18. After an FSIS veterinary medical officer examines a downer animal, depending upon the results of the veterinarian's examination, the veterinarian will condemn (declare unfit for human consumption) the animal or allow the animal to be slaughtered. An animal would be condemned, for example, if it had a fever over 105 degrees or showed symptoms of neurological disease. If a veterinarian allows a downer animal to be slaughtered, the veterinarian will obtain additional information during post mortem inspection to determine the ultimate disposition of the carcass of the downer animal. (Tr. 125-26.)

19. If an FSIS veterinary medical officer suspects that an animal has a neurological disease, the veterinarian must condemn the animal. For every animal a veterinarian condemns for suspected neurological disease, the veterinarian must submit tissue from that animal to a laboratory for diagnosis. Tissue is sent to a laboratory so that FSIS can determine whether the condemned animal was infected with a disease that can be transmitted to humans or other animals. (Tr. 126-28.)

During the times relevant to this proceeding, FSIS inspector Randall Barber inspected and passed downer animals without the required inspections by a veterinary medical officer. Mr. Barber also did not conduct required ante mortem and post mortem inspections at Respondent's establishment. (CX 12A.)

20. Bovine spongiform encephalopathy is a fatal neurological disease for which an FSIS veterinary medical officer checks during ante mortem inspection. Bovine spongiform encephalopathy, called nCJD in humans, is transmissible to humans through the consumption of meat that contains infected nerve tissue. Although Bovine spongiform encephalopathy is not present in the United States, FSIS is concerned about possible introduction into the United States and therefore conducts a surveillance program designed to detect entry into the United States. (Tr. 128-29.) Dr. White testified as to the risk of not inspecting a downer animal as part of the nCJD surveillance program, as follows:

> Well, the risk is horrible in my opinion to comprehend because if we miss it, then we have lost an opportunity to isolate that animal and keep it out of the food chain and to do a trace-back to find out where that animal came from because we would very likely depopulate that herd.

Tr. 130.

Dr. White also explained that nCJD has an incubation period of 5 to 10 years in humans and by the time nCJD would be detected in humans, the opportunity to control the disease would have long passed (Tr. 130).

21. There are approximately 100 diseases of concern during a veterinary inspection of a downer animal. Rabies, a viral infection caused by the rhabdovirus, is one such disease. Rabies attacks the cranial nerves and the central nervous

system. Rabies is more likely to be present in downer animals than in ambulatory animals. Anthrax is another disease that may infect cattle. (Tr. 131, 133, 136-37, 139.)

Listeriosis, a bacterial disease caused by the agent Listeria monocytogenes, is a neurological condition detectable only during ante mortem inspection. One recent outbreak of listeriosis resulted in 21 fatalities and 100 illnesses. Human infection with listeriosis results in an 80-percent rate of hospitalization and a 25-percent fatality rate among those hospitalized. As with other diseases, downer animals are more likely to have listeriosis than ambulatory animals. (Tr. 134-36.)

22. In addition to diseases which may cause an animal to become a downer, a downer animal can develop gangrene and gangrene-like diseases which pose a risk to consumers of meat and meat food products from these animals. As Dr. White explained:

> The nature of a downer animal and the syndrome that we call downer cow syndrome, the animal is down and unable to move about. And the weight of the animal presses against the muscles on the bottom side of the animal like the large muscles of the hind leg, the muscles of the brisket, the muscles of the abdomen, and causes what we call pressure ischemia where the blood essentially flows out of the tissue and circulation is impaired.
>
> This situation sets up the very high likelihood that because there is a lower oxygen supply because the blood is gone or reduced of several forms of gangrene and gangrenelike diseases, diseases caused by Clostridium.

Tr. 137-38.

Gangrene in downer animals can cause a type A toxicity called Clostridium perfringens in consumers of meat from those animals (Tr. 138). Clostridium perfringens in humans "causes a very, very serious gastrointestinal intoxication of a very short incubation and a very, very badly upset gastrointestinal tract" (Tr. 139).

23. Antibiotics present in an animal after treatment are referred to as chemical residues. There is a threshold limit for the permissible chemical residue from every antibiotic that is administered to livestock. Any chemical residue over this threshold is not permitted in meat and meat food products intended for human consumption. The presence of chemical residues in meat poses a risk to consumers who are allergic to them. Because of this health risk, all downer animals must be screened for chemical residues. The test for chemical residues is performed by the FSIS inspector-in-charge and interpreted by an FSIS supervisory veterinary medical officer. If the results are positive, a sample of muscle, kidney, and liver from the animal is sent to a laboratory for analysis. While the test results are pending, the animal carcass is held and is not processed for human consumption. (Tr. 140-42.)

An audit by Dr. White revealed that from August 1996 to January 1997, tests for chemical residues in downer animals were not conducted at Respondent's establishment (Tr. 207). An inference can be made that any time FSIS inspector Randall Barber was not inspecting downer animals, he was not testing for chemical residues in them (Tr. 216-17).

24. Animals also might be condemned during inspection for extensive bruising, for gelatinous deterioration of muscle or fat, or for cancerous tumors because many consumers consider these conditions repugnant (Tr. 142). If any of these repugnancies are not trimmed away, they "become[] incorporated into the product and the consumer has no ability to recognize that it is abnormal and, therefore, trim it off or cut it off or do whatever they would normally do if it was repugnant to them" (Tr. 217).

25. Dr. White was FSIS inspector Randall Barber's supervisor from March 1996 to February 1997. During this period, Dr. White conducted audits of Mr. Barber's work, but found nothing out of order. (Tr. 203.)

26. Dr. White first became aware of a possible problem at Respondent's establishment when FSIS processing inspectors at other establishments in the greater Albany, New York, area told Dr. White that product their establishments had received from Respondent did not look like it had been inspected. In particular, the FSIS inspectors stated that the product contained foreign material, such as dirt, scruff, dandruff, hide, and fecal material. (Tr. 144-46.)

During the weekend following Thanksgiving of 1996, Dr. White had a chance encounter with an employee of Respondent at a K-Mart store. The employee informed Dr. White that Respondent was operating without an inspector present. An FSIS inspector must be present for a slaughtering establishment to operate, and operation of a slaughtering establishment without an inspector present is illegal. Dr. White did not, at that time, take enforcement action. On or about January 2, 1997, Dr. White received more specific information regarding wrongdoing at Respondent's establishment. On January 3, 1997, Dr. White made an unscheduled visit to Respondent's establishment and observed the establishment slaughtering animals and applying the official mark of inspection without an inspector present. (CX 12A at 3; Tr. 147-50.)

27. Mr. Mattick, Respondent's president and sole shareholder, was present at the establishment when Dr. White arrived on January 3, 1997 (CX 12A at 11). Mr. Mattick attempted to explain the absence of FSIS inspector Randall Barber by telling Dr. White that Mr. Barber had gone to the post office and would be returning shortly. (CX 12A at 11, 20-21; Tr. 149.) Mr. Mattick then directed an employee to call Mr. Barber at home and tell him to return to Respondent's establishment. After the employee was unable to reach Mr. Barber, Mr. Mattick called Mr. Barber's home and left a message with Mr. Barber's wife, instructing

Mr. Barber to return to the establishment. (CX 12A at 20-21.) Mr. Mattick also called Richard Dedie, the owner of Rich's Custom Meat Shop, and requested Mr. Dedie to tell anyone who inquired that Mr. Barber had been conducting a review at Rich's Custom Meat Shop on that day (CX 12A at 15). On February 12, 1997, during a telephone call initiated by Mr. Dedie, Mr. Mattick urged Mr. Dedie to "tell the truth" and state that Mr. Barber was not at Rich's Custom Meat Shop on January 3, 1997 (CX 12A at 16). Mr. Mattick did not mention bribery to Dr. White (Tr. 151-52).

28. During his January 3, 1997, visit to Respondent's establishment, Dr. White discovered the inspection brands in a room adjoining the slaughter department. Because there was no FSIS inspector present, the brands should have been locked in the inspector's office. An hour after Dr. White arrived, FSIS inspector Randall Barber returned. (Tr. 150-51.)

29. After Dr. White left Respondent's establishment, he immediately wrote a report of his findings. The next workday, Dr. White reported his findings to his two superiors. Subsequently, Dr. White notified the Office of Inspector General, United States Department of Agriculture, which began an investigation. (CX 12A; Tr. 52, 151-52.)

30. For a 2-year period from approximately January 1995 until January 1997, Mr. Mattick paid bribes to FSIS inspector Randall Barber (Ans. ¶ 1; CX 4-CX 6, CX 9-CX 10).

31. Sometime in 1995, Respondent was experiencing difficulty getting an FSIS veterinary medical officer to be present to inspect downer animals. At about the same time, FSIS inspector Randall Barber approached Mr. Mattick and suggested that he (Mr. Barber) would inspect the downer animals rather than wait for the veterinarian, which would allow Respondent to proceed with business. In exchange, Mr. Barber suggested that he be paid $25 for each downer animal that he passed. (CX 12A at 4; Tr. 66-67, 248-49.) Mr. Mattick felt compelled to accept Mr. Barber's proposal because he believed that Mr. Barber "would waste a half a day. For days he would have us tied down and we wouldn't be able to do nothing" (Tr. 260). Gradually, Mr. Barber stopped inspecting the downer animals and refused to come out of his office to inspect downer animals, except when an FSIS veterinary medical officer or an FSIS compliance officer was at Respondent's establishment (CX 12A at 4, 27-28, 32). Mr. Barber instructed Respondent's employees to slaughter downer animals without inspection (CX 12 at 5, 27).

32. In 1996, FSIS inspector Randall Barber began leaving Respondent's establishment while slaughtering was taking place. When Mr. Barber left Respondent's establishment during slaughtering operations, he gave Respondent's employees the inspection brands and instructed Respondent's employees to apply the brand after slaughtering. He further instructed the employees to replace the brands in his safe when they were done and to lock the safe and the door when they left. (CX 12A at 19-20, 28, 30.)

33. Mr. Mattick never asked FSIS inspector Randall Barber to leave Respondent's establishment (Tr. 218).

34. FSIS inspector Randall Barber kept demanding more and more money from Mr. Mattick (CX 12A at 19; Tr. 98-99). Later, Mr. Barber wanted to be paid a flat fee of $50 a day plus $25 per downer animal. Mr. Mattick's payments to Mr. Barber went up to approximately $500 a week. Mr. Mattick eventually told Mr. Barber he could not afford to pay him $500 a week and the payments went down to $300 a week. (CX 12A at 19; Tr. 72.)

35. When Mr. Mattick initially paid FSIS inspector Randall Barber $25 for each downer animal that was allowed to be slaughtered without examination by an FSIS veterinary medical officer, the payment was for the purpose of not having to wait for the veterinarian to arrive at Respondent's establishment to perform the required inspection. Eventually, Mr. Barber stopped inspecting the downer animals himself. Thus, downer animals were slaughtered by Respondent without any federal inspection at all. (CX 12A at 18-19; Tr. 67-68.)

36. On average, Respondent slaughtered about 4 to 10 downer animals each week, later rising to about 10 downer animals per week, that required inspection by an FSIS veterinary medical officer, but which instead either were inspected by FSIS inspector Randall Barber or received no FSIS inspection. Mr. Mattick acknowledged that some of the animals that were slaughtered at Respondent's establishment would have been condemned if inspected by an FSIS veterinarian. (CX 12A at 18-19; Tr. 102, 104.)

37. During 1997 and 1998, FSIS inspectors documented 101 deficiencies in the conditions at, and operation of, Respondent's establishment (CX 15-CX 90, CX 92-CX 116).

38. Respondent is unfit to receive inspection service under title I of the FMIA. Respondent is unfit to receive inspection service under the PPIA.

Conclusions and Discussion

The initial consequence of Respondent's bribery was that Respondent was permitted to slaughter downer animals without the required inspection. Later, the circumvention of inspection was greatly expanded. Frequently, no animals, either downer or ambulatory, were inspected. (CX 12A at 18-20, 25, 27-28, 32; Tr. 72.)

Ambulatory animals at Respondent's establishment escaped inspection in two ways. First, until settling on a flat rate, Respondent paid FSIS inspector Randall Barber $50 per day to remain in his office and not on the slaughter floor. Mr. Barber frequently remained in his office all day. Different employees of Respondent estimated the duration of this behavior as 12 to 18 months and 1 year. Second, sometime after the initial bribery began, Mr. Barber began leaving

Respondent's establishment early approximately three times per week. After Mr. Barber would leave the establishment, Respondent continued to perform slaughter operations. As many as four to five cows and 20 to 25 calves would be slaughtered while no inspector was present. Even though animals and carcasses were not inspected at these times, Respondent continued to apply the official mark of inspection to indicate to purchasers of Respondent's meat and meat food products that the meat and meat food products had been inspected and passed by the United States Department of Agriculture. (CX 12A at 19-20, 25, 27-28, 32; Tr. 72.)

Richard Van Blargan, Deputy Assistant Deputy Administrator, District Enforcement Operations, FSIS, and a 34-year veteran of FSIS' inspection programs, described FSIS' long-standing campaign to eliminate bribery by providing the meat and poultry slaughtering and processing industries with ample notice and opportunity to inform FSIS of attempted bribery:

> [S]tarting in 1981, the Food Safety and Quality Service and Food Safety [and] Inspection Service after that . . . started a campaign in which we have notified industry consistently, not only have we notified our own employees that if they get offered a bribe, that they have to report it; we have also notified . . . nationwide industry, any inspected plant, if you get approached by any federal inspector, any federal employee looking for any type of money or if they believe that there is an extortion possibility there, is that they had an OIG hot line number that they could call the OIG.
>
> They could do it in the middle of the night and nobody would even know that they were reporting it. We had posters that were posted in plants that says if you've got a problem with inspection personnel, here is the number to call and here is who to contact.
>
> You had either to contact FSIS. You could contact OIG, which was an independent agency within the United States Department of Agriculture, or you could contact the supervisor or the management chain all the way up to the district office.

Tr. 250.

Respondent has had compliance difficulties in the past, but they were of less magnitude than the situation presented in this proceeding. A process deficiency record [hereinafter PDR] is a report used to document an establishment's deficiencies detected by an inspector. PDRs include information such as a narrative description of the deficiency, the nature of the deficiency, the extent and degree of the deficiency, the time in which the deficiency occurred, and the person responsible for correcting the deficiency. The purpose of a PDR is to monitor the

corrective actions and preventive measures taken by an establishment to prevent recurring deficiencies. (Tr. 157.) The Performance-Based Inspection System, a computer system, directs the inspector as to which aspects of establishment operations to monitor on a particular day (Tr. 164-65).

During 1997 and 1998, Respondent received a large number of PDRs, covering a wide range of deficiencies at the establishment (CX 15-CX 90, CX 92-CX 116). Respondent received 18 PDRs during this time period that document conditions at the establishment while product was being produced which could render the product adulterated, such as condensation dripping directly on animal product (CX 15-CX 32; Tr. 167).

Respondent received 46 PDRs for pre-operational sanitation deficiencies (CX 33-CX 78; Tr. 169-70). Pre-operational sanitation refers to the sanitation necessary for an establishment to begin slaughter and processing operations. Respondent received these 46 PDRs even though Dr. White instructed the FSIS inspectors he supervised not to begin checking for pre-operational sanitation deficiencies until informed by Respondent that the establishment was ready to begin operations. Improper pre-operational sanitation could lead to product becoming adulterated with residue from a previous day's operations. Any deficiency that relates to product residues from previous operations creates a risk because bacteria and viruses are common in the environment, and the fat and bone of meat products provide an ideal environment for growth of bacteria and viruses. (Tr. 170, 173.)

During 1997 and 1998, Respondent received 12 PDRs documenting operational deficiencies (CX 79-CX 90; Tr. 174). Operational deficiencies are similar to pre-operational deficiencies, but they occur during operations and thus present a greater risk of the production of adulterated product than pre-operational deficiencies (Tr. 174-75). Respondent also received 12 PDRs during this time period related to deficiencies associated with mishandling of products after production (CX 92-CX 103; Tr. 179). Respondent's improper handling of products, as documented in the 12 PDRs, created a risk of adulteration of those products by foreign matter and filth (Tr. 180).

During 1997 and 1998, Respondent received nine PDRs related to deficiencies regarding product identity, such as the improper labeling and marking of products and the use of ingredients in products that are not allowed in those products (CX 104-CX 112; Tr. 181-82). For example, beef was found in a product not allowed to contain beef (CX 106; Tr. 182). This use of beef in product not allowed to contain beef posed the danger that consumers, not knowing that the product contained beef, might not adequately cook the product (Tr. 182-83).

Also during 1997 and 1998, Respondent received four PDRs documenting other deficiencies, such as the inhumane handling of an animal (CX 113-CX 116). The inhumane treatment presented a safety risk to the FSIS inspector and Respondent's

employees (CX 116; Tr. 184).

Mr. Van Blargan testified concerning his experience and expectations regarding an establishment that finds itself under legal scrutiny, such as Respondent:

> Under normal circumstances, it has been my experience . . . that once an establishment has either been approached or knows that it is the target of either criminal investigation or an administrative action, . . . they go out of their way to be very compliant during that period of time pending the outcome of either a complaint or an indictment being issued in a criminal case or complaint to an administrative action being issued. So I would expect that anyone who is under scrutiny for illegal activities would, in fact, basically, you know, show compliance.

Tr. 231.

Similarly, Dr. White testified that in his experience establishments that are under investigation or have been convicted of criminal violations "are very scrupulous about rigorously conforming to the standards" of the FMIA and the PPIA (Tr. 185). Despite an on-going criminal investigation and Respondent's December 9, 1997, conviction for bribery, Respondent had twice as many PDRs during 1997 and 1998 as Dr. White would expect for an operation of its size, type, production, and age (Tr. 187-88). From January 1999 through September 1999, Respondent received only one PDR.

When Congress passed the FMIA, it made specific findings regarding the public interest of assuring that meat and meat food products are wholesome, not adulterated, and properly marked, labeled, and packaged:

> **§ 602. Congressional statement of findings**
>
> Meat and meat food products are an important source of the Nation's total supply of food. They are consumed throughout the Nation and the major portion thereof moves in interstate or foreign commerce. It is essential in the public interest that the health and welfare of consumers be protected by assuring that meat and meat food products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. Unwholesome, adulterated, or misbranded meat or meat food products impair the effective regulation of meat and meat food products in interstate or foreign commerce, are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged meat and meat food products, and result in sundry losses to livestock producers and processors of meat and meat food products, as well as injury to consumers. The unwholesome, adulterated, mislabeled, or deceptively

> packaged articles can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged articles, to the detriment of consumers and the public generally.

21 U.S.C. § 602. Congress made similar findings regarding poultry and poultry products in the PPIA. *See* 21 U.S.C. § 451.

Section 401 of the FMIA authorizes the Secretary of Agriculture to withdraw inspection service from an establishment if the Secretary determines that the establishment is unfit to engage in any business requiring inspection under title I of the FMIA, based upon a felony conviction:

> **§ 671. Inspection services; refusal or withdrawal; hearing; business unfitness based upon certain convictions; other provisions for withdrawal of services unaffected; responsible connection with business; finality of Secretary's actions; judicial review; record**
>
> The Secretary may (for such period, or indefinitely, as he deems necessary to effectuate the purposes of this chapter) refuse to provide, or withdraw, inspection service under subchapter I of this chapter with respect to any establishment if he determines, after opportunity for a hearing is accorded to the applicant for, or recipient of, such service, that such applicant or recipient is unfit to engage in any business requiring inspection under subchapter I because the applicant or recipient, or anyone responsibly connected with the applicant or recipient, has been convicted, in any Federal or State court, of (1) any felony[.]

21 U.S.C. § 671. Section 18(a) of the PPIA contains a similar provision authorizing the Secretary of Agriculture to withdraw inspection service from an establishment if the Secretary determines that the establishment is unfit to engage in any business requiring inspection under the PPIA, based upon a felony conviction. *See* 21 U.S.C. § 467(a).

Bribery goes to the heart of the FMIA and the PPIA. The United States Court of Appeals for the Sixth Circuit has recognized that "[b]ribing an inspector does strike at the heart of the meat inspection program and cannot be tolerated." *Utica Packing Co. v. Block,* 781 F.2d 71, 78 (6th Cir. 1986). In addition, Mr. Van Blargan testified as to the significance of bribery in regard to the inspection system:

> [B]ribery goes to the heart of the inspection system. We assign inspectors into that establishment to be impartial. They must be independent figures. They have to take independent action with regard to the effect of their

actions as it relates to the industry.

> If they accept bribes, . . . it compromises their integrity, their integrity as well as the integrity of the inspection system and the confidence that consumers put in the product that bears the mark of inspection.
>
> . . . .
>
> There is no way that we can afford to have the number of resources to be in every nook and cranny of that establishment checking every little piece of meat. We have to rely on the integrity of the plants and the integrity of the operators of those plants to have some accountability, and the integrity to comply with the federal regulatory requirements and the law.

Tr. 225-26. *See also In re National Meat Packers, Inc.*, 38 Agric. Dec. 169, 177 (1978) (stating bribery of a grader strikes at the heart of the meat grading program).

There are other circumstances which also favor withdrawal. "The more closely the conduct strikes to the policies of the Federal Meat Inspection Act, the more likely it alone will support a determination of unfitness regardless of the mitigating facts present." *Utica Packing Co. v. Block, supra,* 781 F.2d at 78. Nevertheless, in its Answer, Respondent alleges that "facts exist in mitigation of the Respondent's plea of guilty." (Ans. ¶ 4.)

If mitigating circumstances are to be considered relevant, aggravating circumstances should be considered as well. *In re William Stewart*, 50 Agric. Dec. 511, 519 (1991), *aff'd*, 947 F.2d 937 (3^{d} Cir. 1991) (Table). "Although only the felony conviction affords a jurisdictional basis for withdrawing inspection services from respondent, once the jurisdictional basis is met consideration can be given to any other relevant circumstances, favorable and unfavorable." *Id.* (*Quoting In re Norwich Beef Co.*, 38 Agric. Dec. 380, 396 (1979), *aff'd,* No. H-79-210 (D. Conn. Feb. 6, 1981), *appeal dismissed,* No. 81-6080 (2^{d} Cir. Jan. 22, 1982)). The facts underlying Respondent's bribery conviction are rife with aggravating circumstances which simply enhance the presumption of unfitness resulting from Respondent's conviction of the felony of bribery of an FSIS inspector.

Ante mortem and post mortem inspections are the heart of the federal inspection system. They are the primary means by which unwholesome products are kept out of the food supply. Because of the importance of ante mortem and post mortem inspections, every animal slaughtered under the FMIA must receive both types of inspection.

Beginning in January 1995, and continuing for 2 years, Respondent made daily or weekly cash payments to the FSIS inspector assigned to Respondent's establishment. At first, Respondent paid the FSIS inspector $25 for each downer

animal Respondent was permitted to slaughter without the required veterinary inspection. Later, after this sum reached $500 per week, an amount Respondent could not pay, Respondent and the FSIS inspector agreed upon a flat rate of $300 per week.

In return for its cash payments to the FSIS inspector, Respondent was able, without inspection, to slaughter downer animals and to introduce meat and meat food products from these downer animals into the food supply. Downer animals are more likely to be diseased than ambulatory animals so they are the animals for which proper inspection is most important. By making payments to the FSIS inspector, Respondent was able to avoid what it regarded as the inconvenience of inspection and also the risk of condemnation. Animals which have not received inspection are not fit for human consumption. In the case of downer animals, the situation is even more dire. By their very nature, downer animals are not well; if they were, they would be ambulatory. Mr. Mattick conceded that some of the animals Respondent slaughtered and introduced into the food supply likely would have been condemned if they had been properly inspected.

Furthermore, Respondent's circumvention of inspection extended beyond downer animals. In exchange for $50 per day, the FSIS inspector stayed in his office and did not inspect any animals. In addition, the bribed FSIS inspector often left the establishment early, and Respondent continued to slaughter animals after his departure. Whether the FSIS inspector was in his office for the day or was absent from the establishment, no animals received inspection in either case. Nevertheless, Respondent continued to operate, slaughtering and processing animals, and even marking product as inspected and passed with the inspection brand. While the inspector was absent, no inspection tasks of any type were performed so other aspects of inspection, such as sampling downer animals for chemical residues, were not occurring.

Respondent's bribery of an FSIS inspector in exchange for permission to slaughter uninspected animals and to introduce meat and meat food products from uninspected animals into the food supply presented a threat to consumer health and welfare. Respondent attempts to minimize the dangers to consumers posed by Respondent's circumvention of the inspection system. Specifically, Respondent states "[t]here is no evidence that any meat which was unfit for human consumption entered into the stream of commerce." (Respondent's Brief ¶ 29.) In addition, Respondent, citing the Office of Inspector General's Report (CX 12), repeats Mr. Mattick's assertion that he never "intentionally slaughtered any animals that were clearly unfit for human consumption." (Respondent's Brief ¶ 29.)

The requirement of ante mortem inspection of all animals and post mortem inspection of all carcasses is the heart of the FMIA. Without examination by a trained inspector, an animal's health status is unknown, and thus the meat and meat

food products from that animal are not suitable for human consumption. (Tr. 126.) In particular, an uninspected animal might suffer from diseases communicable to humans, contain dangerous levels of chemical residues, or have conditions repugnant to many consumers (Tr. 119-42). Meat and meat food products from animals with diseases communicable to humans and meat and meat food products containing chemical residues may endanger the health of consumers. Because of these risks to consumer health and the possible existence of repugnancies, the FMIA requires that, before meat or meat food products may enter commerce, inspectors must make an affirmative determination, after ante mortem inspection, that meat and meat food products derived from the animal would not be adulterated. 21 U.S.C. § 603. Moreover, the FMIA requires that inspectors make an affirmative determination, after post mortem inspection, that the carcass of the slaughtered animal is capable of use as human food. Only after such ante mortem inspection, post mortem inspection, and affirmative determinations can meat and meat food products from an animal be marked as "inspected and passed." 21 U.S.C. § 604. These affirmative determinations are significant. There is no assumption that an uninspected animal or an uninspected carcass is suitable for use as human food.

Respondent regularly slaughtered downer animals (CX 12A at 18; Tr. 264). As Mr. Mattick described his operation, "it's a slaughterhouse where you can bring crippled cows and downers." (Tr. 264.) Inspection is especially critical for downer animals, which are the most likely to be diseased (Tr. 117-24). The special health risk to consumers from downer animals is recognized in the FMIA's ante mortem inspection requirement, which mandates the separation for closer inspection of all animals exhibiting signs of disease "[f]or the purpose of preventing the use in commerce of meat and meat food products which are adulterated" (21 U.S.C. § 603(a)).

Inspection is the means by which information about an animal's health status and suitability of meat and meat food products for human consumption are obtained. Respondent evaded inspection for 2 years and the health status of the animals Respondent slaughtered is unknown. During this period, FSIS inspectors from other establishments observed foreign material, such as dirt, scruff, dandruff, hide, and fecal material on products received from Respondent (Tr. 146). Meat and meat food products from animals with one or more of the over 100 diseases FSIS veterinary medical officers are trained to identify may have been introduced into the food supply. Meat and meat food products from animals infected with Bovine spongiform encephalopathy may have entered the food supply undetected, only to be identified in another 5 to 10 years when an infected person exhibits symptoms. Meat and meat food products from animals with other diseases, such as rabies, anthrax, or listeriosis, may have been consumed. Meat and meat food products from animals with impermissibly high chemical residues or with repugnancies, such as cancerous tumors, may have entered the food supply.

Respondent correctly notes that Dr. White did not condemn carcasses when he

performed post mortem inspections during his surprise visit on January 3, 1997 (Respondent's Brief ¶ 30). There is no indication that Dr. White was aware that the animals from which the carcasses were derived had not received ante mortem inspection and thus may have had neurological diseases not detectable during post mortem inspection. Moreover, those carcasses remaining at the end of the shift on January 3, 1997, would have been derived from a tiny portion of the animals slaughtered at Respondent's establishment without inspection from January 1995 to January 1997.

At the very least, as a consequence of Respondent's actions, consumers purchased meat and meat food products which were labeled as U.S. inspected and passed, but which were not inspected, and the public consumed meat and meat food products from animals which were not suitable for human consumption.

Even after January 3, 1997, when Dr. White's surprise visit triggered the investigation, Respondent failed to comply with inspection requirements. Mr. Van Blargan and Dr. White testified that, in their experience, establishments under investigation, such as Respondent, show excellent compliance, but Respondent's compliance was anything but excellent. During 1997 and 1998, Respondent received 101 PDRs, twice as many PDRs as Dr. White would expect based on Respondent's size, type, production, and age.

By applying the official mark of inspection to meat and meat food products that were not inspected and passed, Respondent's actions threatened the integrity of the official mark. The Secretary of Agriculture has recognized the importance of preserving the integrity of the official mark of inspection:

> The official mark "U.S. INSP'D & P'S'D" is a symbol accepted throughout the United States as assurance that the meat is wholesome and not adulterated or misbranded. Similarly, official Federal grade marks, such as "USDA Choice," are accepted throughout the United States as assurance that the meat is of a certain quality. Those marks will continue to be accepted as assurance of wholesomeness and quality only if government inspectors and graders continue to have competence and integrity, and packing plant operators continue to cooperate with, rather than attempt to subvert, the inspection and grading process.

In re Great American Veal Co., 45 Agric. Dec. 1770, 1782-83 (1986), *aff'd,* No. 86-3998 (D.N.J. Oct. 27, 1987), *consent order*, No. 86-3998 (D.N.J. Jan. 12, 1990).

FSIS must be able to rely on the integrity of an establishment's management to be assured that the health and welfare of consumers will be protected. *In re Great American Veal Co., supra*, 45 Agric. Dec. at 1782. This need to rely on an establishment's management includes the need to rely on the integrity of the

establishment's management not to subvert the inspection system through the payment of bribes. Respondent has demonstrated that FSIS cannot rely upon Respondent to assure that the health and welfare of consumers will be protected.

Respondent states that Mr. Mattick "never intentionally slaughtered any animals that were clearly unfit for human consumption." (Respondent's Brief ¶ 29.) This statement wrongly suggests that any slaughter of uninspected animals and introduction into commerce of meat and meat food products from these animals was an accident. Respondent's slaughter of hundreds of downer animals and introduction of meat and meat food products from these animals into the food supply without any inspection was the consequence of a series of intentional actions by Respondent during a 2-year period: (1) failure to notify any authorities of bribery solicitation; (2) payment of bribes to FSIS inspector Randall Barber; (3) introduction of downer animals into the establishment without inspection; (4) slaughter of downer animals without inspection; and (5) marking the meat and meat food products from uninspected animals as "inspected and passed."

Moreover, Respondent presented no evidence nor claimed that it withheld even a single animal from slaughter because Respondent had determined the animal was "clearly unfit for human consumption." The record does not contain any evidence that Respondent did anything to keep meat or meat food products derived from even a single uninspected animal out of the food supply, regardless of the health risk.

FSIS veterinary medical officers, who have the necessary training and knowledge, are responsible for determining the disease status of downer animals, the suitability of downer animals for human consumption, and the proper disposition of downer animals.

Respondent's claim that it would have suffered retaliation for reporting FSIS inspector Randall Barber, although not supported by the evidence, may, nevertheless, have been a belief Respondent held.

Respondent quotes Mr. Mattick's claim that if he had alerted the United States Department of Agriculture of the bribery "it would be worse. They come down on you harder." (Tr. 260-61.) Mr. Mattick also alleged that calling up the United States Department of Agriculture would be "a joke." (Tr. 260.) *See* Respondent's Brief ¶ 41. Everett Millington, Respondent's part-time employee, apparently acting on his own, told Dr. White during a chance encounter at a K-Mart store in late November 1996, that Respondent was operating without an inspector present (CX 12A at 10-11; Tr. 96, 147).

In the words of Dr. White:

> And he basically accosted me -- or accused me, I should say, of being incredibly stupid for not noticing that the inspector wasn't always there during operations.

Tr. 147.

Mr. Millington declined to cooperate with Dr. White or to allow his name to be used (CX 12A at 4; Tr. 147). Respondent presented no specific evidence of any incident in which FSIS had ever retaliated against Respondent. This is not to say that Mr. Mattick did not genuinely believe that FSIS would retaliate for reporting FSIS inspector Randall Barber. In fact, I find Mr. Mattick's testimony in this regard credible.

However, Respondent had alternatives to paying bribes to FSIS inspector Randall Barber. Respondent could have notified Mr. Barber's supervisor, Dr. White, or the Office of Inspector General, United States Department of Agriculture, of Mr. Barber's solicitation of bribery.

Mr. Van Blargan testified as to the numerous methods available to an establishment to report wrongdoing by an inspector, and FSIS' extensive efforts to educate establishments as to these options. Mr. Van Blargan's testimony related to the meat and poultry slaughtering and processing industries, in general, and there was no specific reference to Respondent:

> [S]tarting in 1981, the Food Safety and Quality Service and Food Safety [and] Inspection Service after that . . . started a campaign in which we have notified industry consistently . . . if you get approached by any federal inspector, any federal employee looking for any type of money or if they believe that there is an extortion possibility there, is that they had an OIG hot line number that they could call the OIG.
>
> They could do it in the middle of the night and nobody would even know that they were reporting it. We had posters that were posted in plants that says if you've got a problem with inspection personnel, here is the number to call and here is who to contact.
>
> . . . You could contact OIG, which was an independent agency within the United States Department of Agriculture, or you could contact the supervisor or the management chain all the way up to the district office.

Tr. 250.

Respondent is unfit to receive inspection service under title I of the FMIA. Respondent is unfit to receive inspection service under the PPIA. The federal meat and poultry inspection programs require that FSIS be able to rely on the integrity of inspected establishments. Inspectors cannot be everywhere, and no matter how many resources FSIS has or how good the policies and procedures it adopts, FSIS can never completely eliminate the opportunity for a dishonest establishment to endanger the health of consumers.

From 1995 until detection in 1997, Respondent's actions endangered the health of consumers. By its actions, Respondent has demonstrated that it is not fit to receive inspection services, and thus inspection services should be withdrawn.

Having established that Respondent is unfit to receive federal meat and poultry inspection services, the length of time for the withdrawal of inspection services must now be considered. The meat and poultry slaughtering and processing industries have been on notice since June 26, 1979, as to FSIS' sanction policy. On that date, in order to inform the public of its position, the Food Safety and Quality Service (FSIS' predecessor agency) published in the Federal Register its Policy on Withdrawal or Denial of Federal Inspection or Grading and Acceptance Services Based Upon Convictions for Bribery and Related Offenses. 44 Fed. Reg. 37,322-24 (1979).

In that Federal Register notice, the Food Safety and Quality Service stated that in administrative actions brought for the withdrawal of federal inspection services based upon convictions for bribery, the Food Safety and Quality Service would seek to withdraw indefinitely inspection services:

> FSQS shall institute an administrative proceeding seeking the indefinite withdrawal or denial of Federal inspection and/or grading and acceptance services from any recipient of . . . such services when the Department's action is based upon a criminal conviction or convictions for bribery or related offenses. . . .
>
> . . . .
>
> Proceedings of this nature will be instituted by FSQS whenever the Secretary has jurisdiction to determine whether inspection or grading and acceptance services shall be withdrawn or denied based upon convictions for bribery and related offenses.

44 Fed. Reg. at 37,323.

Also in the notice, the Food Safety and Quality Service explained the compelling need for its policy:

> In addition to evidencing a lack of basic integrity, such convictions must be considered especially serious in the specific context of the meat and poultry industries. While the FMIA, PPIA, and EPIA require the mandatory inspection of the slaughtering of certain livestock and poultry and processing of products thereof, . . . it is physically impossible for Federal inspection personnel to oversee all actions taken by operators and employees of federally inspected establishments. Great reliance must, therefore, be placed upon the integrity of these individuals. . . . When such criminal

> convictions are based upon the giving or offering of bribes or gratuities to Federal inspection or grading personnel, such actions also pose a direct and tangible threat to the integrity of the inspection and grading systems. The Department has recognized the seriousness of such offenses in dealing with its own personnel, who have been subjected to immediate suspension without pay upon being charged with such offenses, and have been dismissed based upon conviction for such offenses.

44 Fed. Reg. at 37,323.

Respondent, in arguing for mitigating circumstances, states that since Dr. White's surprise visit on January 3, 1997, Respondent has remained in operation receiving inspection services continuously. Thus, Respondent contends it has not presented a risk to consumers since that time or further action would have been taken by the Government. Indeed, the Government acknowledged during the criminal proceeding that it was willing to allow Respondent to continue in business as long as Mr. Mattick removed himself from the management of Respondent for a period of time.

Further, Respondent contends that the issue in this proceeding is not Respondent's fitness to receive inspection services, but rather the issue is the appropriate punishment for Respondent's bribery of an FSIS inspector and that Mr. Mattick and Respondent are victims, as well as perpetrators, of the bribery. Respondent states punishment is appropriate, but argues that the destruction of a life's work is not the answer and that Complainant here seeks not only to ban Mr. Mattick from the meat and poultry slaughtering and processing business for life, but also Respondent's successors, affiliates, and assigns, directly or through any corporate device. (Respondent's Brief at 10.) Respondent contends:

> The goal of the Government is to lay this business to waste so that Robert Mattick cannot convey this business to his family or otherwise sell it. This is unfair. It is the full nuclear retaliatory response school of governmental administration.
>
> It is respectfully submitted that the punishment has already taken place in the criminal arena. An administrative fine would be the appropriate punishment for this Court to impose coupled, perhaps, with a short term withdrawal of inspection services.

Respondent's Brief at 10-11.

In formulating its indefinite withdrawal policy, FSIS was aware of the substantial impact that the policy could have upon affected individuals and

establishments. However, FSIS formulated the policy because it determined that such a uniform policy is essential in order to protect the integrity of the inspection system and to deter bribery and related offenses (44 Fed. Reg. at 37,324).

Deterrence is critical because the nature of the inspection system makes it particularly vulnerable to bribery. First, many FSIS inspectors work in establishments where supervisors are not physically present. Second, FSIS inspectors are relatively low-paid employees and thus bribes can significantly augment their salaries. Third, FSIS inspectors make decisions with a large financial impact on the establishments to which they are assigned. The great economic gain to be had from bribery makes bribery attractive to establishments, except for the possible penalties resulting from detection. Finally, bribery is cancerous in nature and, unless stopped, can become routine and even spread to other establishments. *See In re Great American Veal Co., supra*, 45 Agric. Dec. at 1783-84.

Mr. Van Blargan, who participated in the formulation of the sanction policy, testified that FSIS believed "it was far more important to preserve the integrity of the inspection system . . . because bribery really cuts to the heart of the inspection system, undermines the confidence of the consumer public, as well." (Tr. 225.)

FSIS' 20-year policy and Mr. Van Blargan's testimony, based on decades of experience with bribery cases, reflect FSIS' view that indefinite withdrawal is the appropriate sanction for bribery. Although bribery always poses a serious threat to the inspection system, Mr. Van Blargan testified that the threat to the integrity of the inspection system presented by Respondent's bribery was greater than that presented in any of the more than 50 withdrawal actions with which he has been involved because of the severity of the risk to consumer health created by Respondent's actions:

> I have testified and I have been involved in many withdrawal actions as it relates to adulterated product. The primary concern in those areas have [sic] been economic in where we have a substitution of meat product for, say, a plant product.
>
> And although there is some health and safety risk associated with the possibility of someone being allergic to, say, plant food or plant protein, . . . it is generally regarded as [GRAS] or generally [recognized] as [safe] for human consumption.
>
> The reason I look at this as being much more egregious is from the standpoint that . . . we have an establishment operator who had operated under a grant of inspection from the early '80s and through -- including 1995 and is currently still operating, that during the period of time was well aware of the inspection requirements and the regulatory requirements and the types of operations and conditions that had to exist in federally-inspected

plants in order for product to be produced in a wholesome manner.

> They knowingly circumvented that through the effect of offering gratuity and bribes to an inspector to compromise that inspection system. The animals he knowingly put forth from a standpoint that the livestock were downers and had a higher possibility of being either disabled or diseased, subsequently knowingly marked it as inspected and passed when he knew the marks could not be applied unless they were, in fact, inspected and passed, and then subsequently introduced it into the consumer channels with utter disregard as to what the health and safety consequences might be.

Tr. 229-31.

Respondent has demonstrated a lack of integrity necessary for the operation of an establishment inspected under the FMIA and the PPIA. Respondent deceived purchasers of its meat and meat food products by falsely labeling meat and meat food products as federally-inspected and passed when Respondent's meat and meat food products were not inspected and passed. Respondent subjected consumers to health risks by routinely slaughtering animals, including the most sick, without any inspection. FSIS cannot rely upon the integrity of the establishment's management. To protect consumer health and maintain public confidence, inspection services under the FMIA and the PPIA must be provided only to "fit" persons. *In re Apex Meat Co.*, 44 Agric. Dec. 1855, 1872 (1985), *aff'd,* No. 85-3189 (D.D.C. Sept. 19, 1986), *aff'd per curiam,* No. 86-5627 (D.C. Cir. Sept. 16, 1987).

I conclude that Respondent is unfit to engage in any business requiring inspection service under title I of the FMIA (21 U.S.C. §§ 601-624), that Respondent is unfit to engage in any business requiring inspection service under the PPIA (21 U.S.C. §§ 451-471), and that inspection services under title I of the FMIA and under the PPIA should be indefinitely withdrawn from Respondent, its successors, affiliates, and assigns.

ADDITIONAL CONCLUSIONS BY THE JUDICIAL OFFICER

Respondent raises six issues in its Appeal Petition.

First, Respondent states the ALJ's indefinite withdrawal of inspection services under title I of the FMIA and under the PPIA from Respondent, is error. Specifically, Respondent contends that the ALJ's "ultimate determination" is error because "[a]ll of the complained of activities associated with [Respondent's conviction of the felony of bribery of a public official] originated with the USDA [i]nspector (who was convicted of [a]ccepting [b]ribes)." (Appeal Pet. ¶ 1 at 3.)

The record establishes that FSIS Inspector Randall Barber initially solicited bribes from Respondent for Mr. Barber's inspection of downer animals in violation of the FMIA (CX 12A at 4; Tr. 66-67). The record also establishes that Mr. Barber initiated the other violations of the FMIA for which Respondent paid bribes. However, Mr. Barber's initial solicitation of bribery and initiation of the other violations of the FMIA, for which Respondent paid bribes, are not sufficiently mitigating to overcome Respondent's unfitness to receive inspection services under the FMIA and under the PPIA, as demonstrated by Respondent's conviction of the felony of bribery of a public official. I do not find that the ALJ erred when she indefinitely withdrew inspection services under title I of the FMIA and under the PPIA from Respondent.

Respondent had alternatives to paying bribes to FSIS inspector Randall Barber. Respondent could have notified Mr. Barber's supervisor, Dr. White, or the Office of Inspector General, United States Department of Agriculture, of Mr. Barber's solicitation of bribes (Tr. 250). Moreover, Respondent offered no evidence to support its contention that Mr. Barber or FSIS would retaliate for Respondent's reporting Mr. Barber's solicitation of bribes. Dr. White testified that if Respondent had reported Mr. Barber's solicitation of bribes, he (Dr. White) would have immediately removed Mr. Barber from assignment to Respondent's establishment (Tr. 153-54). Moreover, Mr. Van Blargan testified that Mr. Mattick would not be required to identify himself if he reported the solicitation of bribes to the Office of Inspector General, United States Department of Agriculture (Tr. 250). Thus, I find that, while Mr. Mattick may have believed that Mr. Barber or FSIS would retaliate for reporting Mr. Barber's solicitation of bribes, Mr. Barber would have been immediately removed from assignment to Respondent's establishment and would not have been in a position to retaliate against Respondent. Moreover, the record contains no evidence that FSIS would have retaliated against Respondent. To the contrary, the record establishes that FSIS encourages inspected establishments to report the solicitation of bribes by FSIS employees and that FSIS has procedures in place to ensure that there will be no retaliation against those who report the solicitation of bribes by FSIS employees and to ensure that those who contemplate reporting the solicitation of bribes do not fear retaliation either by the FSIS employees who are reported or by FSIS.

Second, Respondent contends "[t]he ALJ improperly admitted into evidence testimony and records concerning subsequent non-compliance with regulations by [Respondent]" (Appeal Pet. ¶ 2 at 5).

Respondent alleges that facts exist in mitigation of its plea of guilty to the felony of bribery of a public official (Answer ¶ 4; Tr. 21-22), Respondent introduced evidence of alleged mitigating circumstances (Tr. 258-66), and Respondent contends mitigating circumstances should be taken into account when determining the sanction to be imposed against Respondent (Appeal Pet. ¶ 1 at 3-5, ¶ 4 at 6-7). Complainant introduced evidence of Respondent's violations of the regulations

issued under the FMIA to prove aggravating circumstances warranting the indefinite withdrawal of inspection services under title I of the FMIA and under the PPIA.

It has long been held that if mitigating circumstances are to be considered, relevant aggravating circumstances should be considered as well.[1] Although only Respondent's felony conviction affords a jurisdictional basis for withdrawing inspection services from Respondent, once the jurisdictional basis is met, consideration can be given to relevant favorable and unfavorable circumstances. Therefore, I find that the ALJ properly admitted evidence of Respondent's violations of the regulations issued under the FMIA introduced by Complainant to prove aggravating circumstances warranting the indefinite withdrawal of inspection services under title I of the FMIA and under the PPIA.

Respondent also contends that FSIS inspectors "artificially inflated the citations" for Respondent's violations of the regulations issued under the FMIA "after the Respondent's conviction in order to build a record against the Respondent for this proceeding." (Appeal Pet. ¶ 2 at 5.)

During 1997 and 1998, FSIS inspectors issued 101 PDRs documenting deficiencies in the conditions at, and the operation of, Respondent's establishment (CX 15-CX 90, CX 92-CX 116). FSIS inspectors have the duty to detect deficiencies in the conditions at, and the operation of, inspected establishments and properly document deficiencies on PDRs. There is a presumption of regularity with respect to official acts of public officers and in the absence of clear evidence to the contrary, public officers are presumed to have properly discharged their official duties.[2] The record contains no evidence that FSIS inspectors "artificially inflated"

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[1] *In re William Stewart*, 50 Agric. Dec. 511, 519 (1991), *aff'd*, 947 F.2d 937 (3d Cir. 1991) (Table); *In re Norwich Beef Co.*, 38 Agric. Dec. 380, 396 (1979), *aff'd*, No. H-79-210 (D. Conn. Feb. 6, 1981), *appeal dismissed*, No. 81-6080 (2d Cir. Jan. 22, 1982).

[2] *See United States v. Mezzanatto*, 513 U.S. 196, 210 (1995) (stating the fact that there is potential for abuse of prosecutorial bargaining power is an insufficient basis for foreclosing plea negotiation; the great majority of prosecutors are faithful to their duties and absent clear evidence to the contrary, courts presume that public officers properly discharge their duties); *INS v. Miranda,* 459 U.S. 14, 18 (1982) (per curiam) (stating although the length of time to process the application is long, absent evidence to the contrary, the court cannot find that the delay was unwarranted); *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926) (stating a presumption of regularity supports the official acts of public officers, and, in the absence of clear evidence to the contrary, courts presume they have properly discharged their official duties); *Sunday Lake Iron Co. v. Wakefield TP,* 247 U.S. 350 (1918) (stating the good faith of taxing officers and the validity of their actions are presumed; when assailed, the burden of proof is on the complaining party); *Chaney v. United States*, 406 F.2d 809, 813 (5th Cir.) (stating the presumption that the local selective service board considered the appellant's request for reopening in accordance with 32 C.F.R. § 1625.2 is a strong presumption that is only overcome by clear and convincing evidence), *cert. denied*, 396 U.S. 867 (1969); *Lawson Milk Co. v. Freeman*, 358 F.2d 647, 649 (6th Cir. 1966) (stating without a showing that the action of the Secretary of Agriculture was

the number of PDRs which they issued after Respondent's conviction of bribing

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arbitrary, his action is presumed to be valid); *Donaldson v. United States*, 264 F.2d 804, 807 (6th Cir. 1959) (stating the presumption of regularity supports official acts of public officers and in the absence of clear evidence to the contrary, courts presume they have properly discharged their duties); *Panno v. United States*, 203 F.2d 504, 509 (9th Cir. 1953) (stating a presumption of regularity attaches to official acts of the Secretary of Agriculture in the exercise of his congressionally delegated duties); *Reines v. Woods*, 192 F.2d 83, 85 (Emer. Ct. App. 1951) (stating the presumption of regularity which attaches to official acts can be overcome only by clear evidence to the contrary); *NLRB v. Bibb Mfg. Co.*, 188 F.2d 825, 827 (5th Cir. 1951) (holding duly appointed police officers are presumed to discharge their duties lawfully and that presumption may only be overcome by clear and convincing evidence); *Woods v. Tate*, 171 F.2d 511, 513 (5th Cir. 1948) (concluding an order of the Acting Rent Director, Office of Price Administration, is presumably valid and genuine in the absence of proof or testimony to the contrary); *Pasadena Research Laboratories, Inc. v. United States*, 169 F.2d 375, 381-82 (9th Cir.) (stating the presumption of regularity applies to methods used by government chemists and analysts and to the care and absence of tampering on the part of postal employees), *cert. denied*, 335 U.S. 853 (1948); *Laughlin v. Cummings*, 105 F.2d 71, 73 (D.C. Cir. 1939) (stating there is a strong presumption that public officers exercise their duties in accordance with law); *In re Dwight L. Lane*, 59 Agric. Dec. ___, slip op. at 42-45 (May 17, 2000) (stating that a United States Department of Agriculture hearing officer is presumed to have adequately reviewed the record and no inference is drawn from an erroneous decision that the hearing officer failed to properly discharge his official duty to review the record); *In re Marilyn Shepherd*, 57 Agric. Dec. 242, 280-82 (1998) (stating that, in the absence of clear evidence to the contrary, United States Department of Agriculture inspectors and investigators are presumed to have properly discharged their duty to document violations of the Animal Welfare Act); *In re Auvil Fruit Co.*, 56 Agric. Dec. 1045, 1079 (1997) (stating without a showing that the official acts of the Secretary of Agriculture are arbitrary, his actions are presumed to be valid); *In re Kim Bennett*, 55 Agric. Dec. 176, 210-11 (1996) (stating that instead of presuming United States Department of Agriculture attorneys and investigators warped the viewpoint of United States Department of Agriculture veterinary medical officers, the court should have presumed that training of United States Department of Agriculture veterinary medical officers was proper because there is a presumption of regularity with respect to official acts of public officers); *In re C.I. Ferrie*, 54 Agric. Dec. 1033, 1053 (1995) (stating use of United States Department of Agriculture employees in connection with a referendum on the continuance of the Dairy Promotion and Research Order does not taint the referendum process, even if petitioners show some United States Department of Agriculture employees would lose their jobs upon defeat of the Dairy Promotion and Research Order, because a presumption of regularity exists with respect to official acts of public officers); *In re Mil-Key Farm, Inc.*, 54 Agric. Dec. 26, 55 (1995) (stating without a showing that the official acts of the Secretary of Agriculture are arbitrary, his actions are presumed to be valid); *In re Hershey Chocolate U.S.A.*, 53 Agric. Dec. 17, 55 (1994) (stating without a showing that the official acts of the Secretary are arbitrary, his actions are presumed to be valid), *aff'd*, No. 1:CV-94-945 (M.D. Pa. Feb. 3, 1995); *In re King Meat Co.*, 40 Agric. Dec. 1468, 1494 (1981) (stating there is a presumption of regularity with respect to the issuance of instructions as to grading methods and procedures by the Chief of the Meat Grading Branch, Food Safety and Quality Service, United States Department of Agriculture), *aff'd*, No. CV 81-6485 (C.D. Cal. Oct. 20, 1982), *remanded*, No. CV 81-6485 (C.D. Cal. Mar. 25, 1983) (to consider newly discovered evidence), *order on remand*, 42 Agric. Dec. 726 (1983), *aff'd*, No. CV 81-6485 (C.D. Cal. Aug. 11, 1983) (original order of Oct. 20, 1982, reinstated *nunc pro tunc*), *aff'd*, 742 F.2d 1462 (9th Cir. 1984) (unpublished) (not to be cited as precedent under 9th Circuit Rule 21); *In re Gold Bell-I&S Jersey Farms, Inc.*, 37 Agric. Dec. 1336, 1361 (1978) (rejecting respondent's theory that United States Department of Agriculture shell egg graders switched cases of eggs to discredit respondent, in view of the presumption of regularity supporting acts of public officials), *aff'd*, No. 78-3134 (D.N.J. May 25, 1979), *aff'd mem.*, 614 F.2d 770 (3d Cir. 1980).

FSIS inspector Randall Barber in order to build a record against Respondent for this proceeding. Therefore, Respondent failed to overcome the presumption that FSIS inspectors properly issued the PDRs in question (CX 15-CX 90, CX 92-CX 116).

Respondent further states Complainant concedes "a negligible non-compliance history prior to January 3, 1997." (Appeal Pet. ¶ 2 at 5.) Respondent cites Tr. 214-15 as the basis for its statement that Complainant concedes a "negligible non-compliance history prior to January 3, 1997." I have carefully reviewed the cited pages of the transcript and find no such concession.

Third, Respondent contends the ALJ erroneously allowed the admission into evidence of a Federal Register notice which sets forth a United States Department of Agriculture "per se policy" that has been consistently rejected by federal courts (Appeal Pet. ¶ 3 at 6).

The ALJ did allow the admission into evidence of a Federal Register notice (44 Fed. Reg. 37,322-24 (1979); CX 11; Tr. 221). This Federal Register notice describes FSIS' policy regarding the institution of administrative proceedings against recipients of federal inspection services when the United States Department of Agriculture's action is based upon a criminal conviction or convictions for bribery or related offenses (44 Fed. Reg. at 37,323; CX 11 at 2). The Federal Register notice states that the Food Safety and Quality Service (FSIS' predecessor agency) shall seek indefinite withdrawal of federal inspection services from a recipient of federal inspection services when the United States Department of Agriculture's institution of an administrative proceeding against the recipient of federal inspection services is based upon a criminal conviction or convictions for bribery or related offenses (44 Fed. Reg. at 37,323; CX 11 at 2).

I find that the Federal Register notice (44 Fed. Reg. 37,322-24 (1979); CX 11) does not set forth a "per se policy," as Respondent contends. Instead, the Federal Register notice sets forth FSIS' policy regarding the sanction FSIS seeks in administrative proceedings that it institutes against, *inter alia*, recipients of inspection services under the FMIA and the PPIA when the proceedings are based upon a criminal conviction or convictions for bribery or related offenses. I have carefully examined the cases cited by Respondent in support of its contention that the Federal Register notice has been "rejected" by federal courts[3] and find that none

[3]Respondent states the following cases have rejected the "per se" policy set forth in 44 Fed. Reg. 37,322-24 (1979): *Windy City Meat Co. v. United States Dep't of Agric.*, 926 F.2d 672 (7th Cir. 1991); *Chernin v. Lyng*, 874 F.2d 501 (8th Cir. 1989); *Utica Packing Co. v. Block*, 781 F.2d 71 (6th Cir. 1986); *Wyszynski Provision Co. v. Secretary of Agric.*, 538 F. Supp. 361 (E.D. Pa. 1982); and *Toscony Provision Co. v. Block*, 538 F. Supp. 318 (D.N.J. 1982) (Appeal Pet. ¶ 3 at 6).

of these cases[4] "reject" the Federal Register notice, as Respondent contends. The "per se" issue addressed in cases cited by Respondent[5] relates to the lawfulness of the Judicial Officer's conclusion that fitness determinations under 21 U.S.C. § 671 can rest solely upon convictions without regard to mitigating circumstances. The cases cited by Respondent[6] do not preclude the ALJ from admitting the Federal Register notice (CX 11) into evidence. Therefore, I reject Respondent's contention that the ALJ erroneously allowed the admission into evidence of the Federal Register notice (CX 11).

Respondent also contends the ALJ "felt" that she was compelled by the Federal Register notice (CX 11) to withdraw indefinitely inspection services under title I of the FMIA and under the PPIA from Respondent (Appeal Pet. ¶ 3 at 6). I find nothing in the record that supports Respondent's contention that the ALJ "felt" her disposition of the proceeding was constrained by the Federal Register notice (CX 11). Moreover, the Federal Register notice does not purport to mandate the disposition of administrative proceedings. Instead, the Federal Register notice merely states that FSIS shall institute an administrative proceeding *seeking* indefinite withdrawal of federal inspection services from a recipient of federal inspection services when the United States Department of Agriculture's action is based upon a criminal conviction or convictions for bribery or related offenses (44 Fed. Reg. at 37,323; CX 11 at 2). The Federal Register notice makes clear that the *decisions* rendered in administrative proceedings instituted by FSIS in which FSIS *seeks* indefinite withdrawal of federal inspection services are those of administrative law judges, the Judicial Officer, and the federal courts, as follows:

> Such proceedings shall be conducted in conformity with the applicable Rules of Practice, which afford the respondent the opportunity for a hearing before an Administrative Law Judge. Decisions rendered in such proceedings may then be appealed to the Judicial Officer of the Department, whose decisions may, in turn, be appealed to the Federal courts.

44 Fed. Reg. at 37,323; CX 11 at 2.

Finally, I note that the Order in this Decision and Order indefinitely withdrawing inspection services under title I of the FMIA and under the PPIA from Respondent is not compelled by the Federal Register notice (44 Fed. Reg. 37,322-24 (1979); CX 11) or by FSIS' adherence to the policy set forth in that Federal Register notice.

Fourth, Respondent contends the ALJ erroneously failed to consider evidence

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[4]See note 3.

[5]See note 3.

[6]See note 3.

of mitigating circumstances introduced by Respondent (Appeal Pet. ¶ 4 at 6-7).

The ALJ did not base her determination that Respondent is unfit to receive inspection services solely upon Respondent's conviction of the felony of bribery without regard to mitigating circumstances. Instead, the Initial Decision and Order clearly establishes that the ALJ considered mitigating circumstances alleged by Respondent. Specifically, the ALJ addressed: (1) Respondent's contention that FSIS inspector Randall Barber initiated the bribery by soliciting bribes from Respondent (Initial Decision and Order at 11); (2) Respondent's contention that Respondent felt compelled to bribe Mr. Barber (Initial Decision and Order at 11); (3) Respondent's contention that Mr. Barber stopped inspecting animals at Respondent's establishment and left Respondent's establishment while slaughtering operations were taking place and that Respondent did not ask Mr. Barber to leave the establishment (Initial Decision and Order at 11-12); (4) Respondent's contention that Mr. Barber instructed Respondent's employees to slaughter animals without inspection and to unlawfully apply the official mark of inspection to meat and meat food products that had not been inspected and passed (Initial Decision and Order at 12); (5) Respondent's contention that there is no evidence that any of its meat or meat food products which were unfit for human consumption entered commerce (Initial Decision and Order at 21); (6) Respondent's contention that Respondent never intentionally slaughtered animals that were clearly unfit for human consumption (Initial Decision and Order at 24); (7) Respondent's contention that Mr. Barber and FSIS would retaliate against Respondent if Respondent informed FSIS of the bribery (Initial Decision and Order at 25); (8) Respondent's contention that since January 3, 1997, Respondent has not presented a risk to the health of consumers (Initial Decision and Order at 28); (9) Respondent's contention that Respondent and Mr. Mattick are victims, as well as perpetrators, of the bribery (Initial Decision and Order at 28); and (10) Respondent's contention that indefinite withdrawal of inspection services under title I of the FMIA and under the PPIA would result in the destruction of a life's work (Initial Decision and Order at 28). Therefore, I reject Respondent's contention that the ALJ did not consider "any mitigating circumstances put forth by Respondent." (Appeal Pet. ¶ 4 at 6.)

Moreover, I have reviewed the circumstances which Respondent characterizes as mitigating in its Appeal Petition (Appeal Pet. ¶ 4 at 7) and find that they do not overcome Respondent's unfitness to receive inspection services under title I of the FMIA and under the PPIA, as demonstrated by Respondent's conviction of the felony of bribery of a public official.[7]

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[7]It appears that two of the circumstances characterized by Respondent as "mitigating circumstances" are not mitigating circumstances. Specifically, Respondent contends "Respondent provides a necessary service to the farming communities of the Hudson Valley and adjoining environs,

Fifth, Respondent contends Ellen Quackenbush "testified that she had no evidence that any sick animals had been introduced into the stream of commerce" and that the ALJ erred by allowing Complainant to impeach Ellen Quackenbush's testimony (Appeal Pet ¶ 5 at 7).

The record reveals that Complainant's counsel did not attempt to impeach Ellen Quackenbush, but instead Complainant's counsel refreshed Ellen Quackenbush's recollection (Tr. 100-02). I do not find the ALJ erred by allowing Complainant's counsel to refresh the recollection of a witness.

Sixth, Respondent contends the ALJ erred by allowing Mr. Van Blargan to testify regarding his opinion as to what sanction should be imposed on Respondent (Appeal Pet. ¶ 6 at 7).

The United States Department of Agriculture's current sanction policy is set forth in *In re S.S. Farms Linn County, Inc.* (Decision as to James Joseph Hickey and Shannon Hansen), 50 Agric. Dec. 476, 497 (1991), *aff'd*, 991 F.2d 803, 1993 WL 128889 (9th Cir. 1993) (not to be cited as precedent under 9th Circuit Rule 36-3):

> [T]he sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose.

In light of this sanction policy, the sanction recommendations of administrative officials charged with the responsibility for achieving the congressional purposes of the FMIA and the PPIA are highly relevant to any sanction to be imposed and are entitled to great weight in view of the experience gained by administrative officials during their day-to-day supervision of the regulated meat and poultry slaughtering and processing industries. Mr. Van Blargan, the Deputy Assistant Deputy

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which in the absence of Greenville Packing Co., Inc., the needs of the surrounding farming communities will not be met; and Respondent provides jobs and commerce in an economically depressed area of the State of New York." (Appeal Pet. ¶ 4 at 7.) I find that, with respect to these two circumstances, Respondent is arguing that the indefinite withdrawal of inspection services under title I of the FMIA and under the PPIA from Respondent will have collateral effects on farming communities, jobs, and commerce. Collateral effects are not mitigating circumstances and should not be considered to determine whether they overcome a respondent's unfitness to receive inspection services under title I of the FMIA and under the PPIA, as demonstrated by a respondent's conviction of the felony of bribery of a public official. However, should a reviewing court agree with Respondent's characterization of these circumstances or disagree with my view that collateral effects should not be considered, I have considered the collateral effects identified in Respondent's Appeal Petition ¶ 4 at 7 and determine that they do not overcome Respondent's unfitness to receive inspection services under title I of the FMIA and under the PPIA, as demonstrated by Respondent's conviction of the felony of bribery of a public official.

Administrator, District Enforcement Operations, FSIS, is an administrative official charged with the responsibility for achieving the congressional purposes of the FMIA and the PPIA. Therefore, Mr. Van Blargan's testimony regarding any sanction to be imposed on Respondent is highly relevant, and the ALJ did not err by allowing Mr. Van Blargan to testify regarding his sanction recommendation.

Respondent further contends the sanction to be imposed on Respondent should be left to the discretion of the ALJ and is not a proper matter for testimony before the ALJ (Appeal Pet. ¶ 6 at 7). Prior to Respondent's filing its Appeal Petition, the sanction to be imposed was completely within the discretion of the ALJ. Mr. Van Blargan's sanction recommendation is not controlling, and the ALJ was free to impose any sanction on Respondent warranted in law and justified in fact.[8]

For the foregoing reasons, the following order should be issued.

Order

Inspection services under title I of the Federal Meat Inspection Act, as amended, and under the Poultry Products Inspection Act, as amended, are indefinitely withdrawn from Greenville Packing Co., Inc., its successors, affiliates, and assigns, directly or through any corporate device.

This Order shall become effective 30 days after service of this Order on Respondent.

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[8]The recommendation of administrative officials as to the sanction to be imposed is not controlling, and in appropriate circumstances, the sanction imposed may be considerably less, or different, than that recommended by administrative officials. *In re James E. Stephens*, 58 Agric. Dec. 149, 182 (1999); *In re Judie Hansen*, 57 Agric. Dec. 1072, 1141 (1998), *appeal docketed*, Nos. 99-2640, 99-2665 (8th Cir. June 1 and June 25, 1999); *In re Richard Lawson*, 57 Agric. Dec. 980, 1031-32 (1998), *appeal dismissed*, No. 99-1476 (4th Cir. June 18, 1999); *In re Western Sierra Packers, Inc.*, 57 Agric. Dec. 1578, 1604 (1998); *In re Colonial Produce Enterprises, Inc.*, 57 Agric. Dec. 1498, 1514 (1998); *In re Marilyn Shepherd*, 57 Agric. Dec. 242, 283 (1998); *In re Scamcorp, Inc.*, 57 Agric. Dec. 527, 574 (1998); *In re Allred's Produce*, 56 Agric. Dec. 1884, 1918-19 (1997), *aff'd*, 178 F.3d 743 (5th Cir.), *cert. denied*, 120 S. Ct. 530 (1999); *In re Kanowitz Fruit & Produce, Co.*, 56 Agric. Dec. 942, 953 (1997) (Order Denying Pet. for Recons.); *In re William E. Hatcher*, 41 Agric. Dec. 662, 669 (1982); *In re Sol Salins, Inc.*, 37 Agric. Dec. 1699, 1735 (1978); *In re Braxton Worsley*, 33 Agric. Dec. 1547, 1568 (1974).